



*New England Cable & Telecommunications Association, Inc.*

*New England Cable & Telecommunications Association, Inc.  
53 State Street • 5<sup>th</sup> Floor • Boston, MA 02109  
Tel: 781.843.3418*

**STATEMENT OF THE NEW ENGLAND CABLE & TELECOMMUNICATIONS  
ASSOCIATION, INC. IN OPPOSITION TO SENATE BILL 278**

**AN ACT REQUIRING MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTORS  
TO PAY A COMMUNITY ACCESS PROGRAMMING FEE**

**March 8, 2022**

Good morning, Chairs Needleman, Arconti, Vice Chairs Winfield, Allie-Brennan, Ranking Members Formica, Ferraro; and esteemed Members of the Energy & Technology Committee. My name is Tim Wilkerson, and I am President of the New England Cable and Telecommunications Association (“NECTA”).

I appreciate the opportunity to file testimony describing NECTA’s cable members’ concerns with Senate Bill 278 (“SB 278”).

**I. INTRODUCTION**

NECTA is a five-state regional trade association representing substantially all private cable telecommunications companies in Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont. All NECTA cable members have a physical presence in Connecticut, including two Fortune® 100 companies, Charter Communications, which is headquartered in Stamford, and Comcast with a Regional New England headquarters in Berlin and a subsidiary, NBC Sports, headquartered in Stamford, as well as privately held Cox Communications and Breezeline (formerly known as Atlantic Broadband). NECTA’s cable broadband members have collectively invested \$2 billion over the past seven years developing state of the art networks in Connecticut, and in 2022, the cable industry expects to employ over six thousand Connecticut residents.

**II. NECTA’S OPPOSITION TO SB 278**

This bill proposes to make Connecticut the first state in the country to impose Public, Educational, and Government (“PEG”) programming fees not just on cable television subscribers, who have access to PEG content as part of their cable service, but also to subscribers of Internet access services, as well as consumers who subscribe to video streaming services delivered via the Internet, neither of whom has access to PEG content as part of their services. NECTA strongly opposes the legislation.

If enacted, SB 278 would: (1) violate and thus be preempted by federal law; (2) *raise* the cost of Internet access at a time when the nation is united in *reducing* barriers to access; and (3) prejudice ongoing proceedings before the Public Utility Regulatory Authority (“PURA”) concerning the adequacy of PEG funding. Besides the significant legal and policy problems with SB 278, the

legislation is also unnecessary. PEG programming is supported by cable customers directly through fees and taxes. In 2021, NECTA's members contributed approximately \$4.5 million to support Connecticut PEG programming. There is no reasonable justification for lawmakers to impose higher costs on Connecticut consumers for other, non-cable services, as SB 278 would do – especially when historical inflation is already straining household budgets.

### III. SB 278 IS PREEMPTED BY FEDERAL LAW.

The proposed legislation would be preempted on multiple grounds:

- *First*, in a recent order implementing the federal Cable Act, the Federal Communications Commission (“FCC”) ruled that state and local governments are prohibited from using their cable franchising authority to regulate services other than traditional cable service. *See* Third Report & Order, 34 FCC Rcd. 6844 ¶¶ 64-119 (2019) (“FCC Order”); 47 C.F.R. § 76.43 (codifying this “[m]ixed-use rule”). The FCC Order was largely upheld on multiple appeals consolidated before the U.S. Court of Appeals for the Sixth Circuit. The court affirmed that section 624(b)(1) of the Cable Act prohibits any exercise of franchising authority to impose fees on (or otherwise regulate) Internet access services, streaming services, and other “information services.” *City of Eugene v. FCC*, 998 F.3d 701, 714-15 (6th Cir. 2021), cert. denied 595 U.S. \_\_\_\_ (Feb. 22, 2022). The court likewise affirmed that the Cable Act expressly preempts any state or local law or ordinance that is inconsistent with such federal limitations. *Id.* at 715-16 (citing section 636(c) of the Cable Act). The imposition of PEG fees is unquestionably an exercise of franchising authority. *See* 47 U.S.C. § 531. Imposing such fees on non-cable services, as SB 278 proposes would thus violate the Cable Act and therefore be expressly preempted.
- *Second*, both Internet access and streaming services are *interstate* communications services. The FCC has exclusive jurisdiction over such services. Attempts by state and local authorities to regulate Internet access and streaming services are thus separately preempted by the federal Communications Act. *See, e.g., Ivy Broad. Co. v. AT&T Co.*, 391 F.2d 486, 490 (2d Cir. 1968); *see also N.Y. State Telecomms. Ass’n, Inc. v. James*, 544 F.Supp.3d 269, 280-89 (E.D.N.Y. 2021) (holding that plaintiffs were likely to succeed on the merits of their claim that state regulation of broadband, an interstate communications service, is preempted).
- *Third*, in enacting the federal Internet Tax Freedom Act (“ITFA”), Congress expressly prohibited state and local governments from imposing “[t]axes on Internet access,” broadly defining “tax” to include “any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed for a specific privilege, service, or benefit conferred.” 47 U.S.C. § 151 note (Moratorium on Internet Taxes), §§ 1101(a)(1), 1105(8). The PEG fee plainly meets this definition. Service providers would receive no benefit in exchange for paying the fee. And the PEG programming would not even be available to Connecticut consumers over the non-cable services that would now be taxed under SB 278. Applying the PEG fee to Internet access services is thus also barred by ITFA.
- *[[Fourth*, PEG fees fund government content-based speech mandates that have only been upheld as applied to cable operators, based on the outdated and now unsustainable theory

that cable operators have a “bottleneck” monopoly in the distribution of video programming. *Time Warner Ent’mnt Co., L.P. v. FCC*, 93 F.3d 957, 969 (D.C. Cir. 1996); *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 656-57 (1994). Requiring providers of non-cable services and their customers to fund such speech mandates, for content that is not even available on such services, raises First Amendment concerns. ]]

#### **IV. SB 278 WOULD RAISE THE COST OF BROADBAND, CONTRARY TO BIPARTISAN STATE AND FEDERAL GOALS.**

During this time of unprecedented political polarization, policymakers at every level of government are at least united in the goal of *lowering* the cost of accessing the Internet. The federal Emergency Broadband Benefit and Affordable Connectivity Programs and Governor Lamont’s Everybody Learns Initiative – in which *all* NECTA members have participated – are prime examples. SB 278 charts a course in precisely the wrong direction by directly *increasing* what consumers must pay for Internet access services.

#### **V. SB 278 PREJUDGES ONGOING PROCEEDINGS BEFORE THE PUBLIC UTILITIES REGULATORY AUTHORITY CONCERNING THE ADEQUACY OF PEG FUNDING.**

PURA is currently considering the adequacy of PEG funding in PURA Docket 21-07-26. As noted earlier, the amount of PEG funding provided by Connecticut cable customers in 2021 alone totaled approximately \$4.5 million. The General Assembly should allow PURA to continue its investigation and not prejudice any claimed need for even *more* PEG funding by imposing SB 278’s unprecedented new taxes on Connecticut consumers’ non-cable services, especially during this period of record high inflation.

For all of the above reasons, NECTA respectfully opposes SB 278.

Thank you.

Respectfully,

Dated: March 8, 2022

---

Timothy O. Wilkerson  
President